

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

(1) (2) Claimant alleges he was injured on August 28, 1997, while working for the respondent. A preliminary hearing was held in this case before Administrative Law Judge Floyd V. Palmer on March 25, 1998. Claimant requested a preliminary hearing order requiring respondent to provide claimant medical and temporary total disability compensation for his work-related injuries.

The Appeals Board has reviewed the administrative file and finds claimant complied with all the procedural and notice requirements of K.S.A. 1997 Supp. 44-534a and K.A.R. 51-3-5a. Written notice of the claimant's intent to file an application for preliminary hearing was served on the respondent and written notice of the time and date of the preliminary hearing was mailed to the respondent at least seven days before the hearing. However, neither the respondent nor its insurance carrier appeared at the preliminary hearing.

After evidence was presented by the claimant, the Administrative Law Judge found the claim compensable and ordered respondent and its insurance carrier, Aetna, to provide claimant with temporary total disability and medical compensation for injuries he received on August 28, 1997, while employed by the respondent.

Aetna contends it was not the insurance carrier on August 28, 1997, the date of claimant's accident, and further was not given notice of the preliminary hearing as required by K.S.A. 1997 Supp. 44-534a. The Appeals Board finds the workers compensation act does not require the claimant to identify or notify respondent's insurance carrier of a preliminary hearing. Notice of a preliminary hearing need only be given to the employer. See Martel v. Waste Management of Wichita, Docket No. 222,516 (July 1997).

However, the Appeals Board finds that Administrative Law Judge Floyd V. Palmer's April 2, 1998, preliminary hearing Order for Compensation should be remanded to the Administrative Law Judge for the purpose of holding a hearing on whether respondent was insured on claimant's date of accident. Aetna should be given the opportunity to present evidence to the Administrative Law Judge on this issue. If it is found that Aetna was not respondent's insurance carrier on claimant's date of accident, then other issues would need to be addressed such as whether respondent is solvent and able to provide claimant with the ordered workers compensation benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Floyd V. Palmer's April 2, 1998, preliminary hearing Order of Compensation should be remanded to the Administrative Law Judge to hold a hearing on the issue of whether respondent was insured on claimant's date of accident.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

c: Judy A. Pope, Topeka, KS
Kenneth J. Hursh, Overland Park, KS
Administrative Law Judge, Topeka, KS
Philip S. Harness, Director